

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

In the Matter of:

NORTH COUNTY REAL ESTATE INC.,
dba HMC FUNDING,

and BRIAN P. TIERNEY,

Respondents.

NO. C-03-070-03-SC01

STATEMENT OF CHARGES AND
NOTICE OF INTENTION TO ENTER AN
ORDER TO REVOKE LICENSE, IMPOSE
FINES, COLLECT INVESTIGATIVE
COSTS, AND PROHIBIT FROM
PARTICIPATION IN THE INDUSTRY

I. INTRODUCTION

Pursuant to RCW 31.04.165, the Director of the Department of Financial Institutions (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of July 21, 2003, the Director institutes this proceeding and finds as follows:

II. FACTUAL ALLEGATIONS

A. Respondents:

1. **North County Real Estate Inc., dba HMC Funding (North County).** The business location for North County is 2386 Faraday Avenue, Suite 130, Carlsbad, California 92008.
2. **Brian P. Tierney (Tierney).** Tierney was identified in the application to the Department as president of North County.

B. License: On November 6, 2000, North County, through Tierney, submitted an application to be licensed in the State of Washington to do business as a consumer loan company under chapter RCW 31.04 RCW, the Consumer Loan Act. Based on the information contained in North County's application, the Department issued a license to do business as a consumer loan company in the state of Washington on February 2, 2001, license Number 520-CL-2119-00 (New No. 18021). North County continues to be licensed to date.

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C-03-070-03-SC01 – North County Real Estate Inc.

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8795

1 **C. Application for License:**

2 **1. Addendum 7 - References from Other States:**

- 3 a) **Application Requirements:** The application for a consumer loan license requests information in
4 Addendum 7 concerning the applicant's licensing in other states. The Department specifically
5 requests:

6 "If the applicant is or has ever been licensed to engage in the business of lending or brokering in any
7 other state, follow these instructions

- 8 1. Provide a list of all states in which you are or were licensed. This list should include the name of
9 licensee; type of license; name, address, phone, fax, and contact person of the regulatory entity
10 issuing the license.
11 2. Distribute the enclosed Reference Form:
12"

- 13 b) **Information Submitted by Respondent:** On November 6, 2000, North County, through Tierney,
14 submitted a response to Addendum 7 by providing the following list of states in which it was or had
15 been licensed: California, Colorado, Indiana, Idaho, Iowa, Minnesota, Montana, Nebraska, New
16 Mexico, Oklahoma, Oregon, South Dakota, Utah and Wyoming. Respondent provided Reference
17 Forms for those states listed above.

18 **2. Addendum 8 - Disciplinary History**

- 19 a) **Application Requirements:** The application further requests information in Addendum 8 concerning
20 the applicant's disciplinary history. The Department specifically requests:

21 "Is there presently or has there ever been any regulatory enforcement action (including the suspension
22 of license) against the applicant in any state? If the answer to this question is 'yes' please list all
23 regulatory actions taken against the applicant and provide a detailed explanation of each."

- 24 c) **Information Submitted by Respondent:** On November 6, 2000, North County, through Tierney,
25 submitted a response to Addendum 8, stating: "No enforcement action has been taken by any state."

D. Falsification of Application: North County and Tierney provided false statements in obtaining a license. In
Addendum 7, North County and Tierney did not include the states of Rhode Island or Georgia in the list of states in
which it had been licensed. In Addendum 8, North County and Tierney also did not include enforcement orders entered
by the states of Georgia and Rhode Island. On June 25, 1999, the State of Georgia Department of Banking and Finance

1 revoked a license held by North County. On June 8, 2000, the State of Rhode Island Department of Business
2 Regulations revoked North County's license numbers 98000899LL and 98000900LB.

3 Tierney signed the application for a consumer loan license as the "Authorized Official" of North County for
4 submission of the application. Contained within the application is a "Signature and Oath of Applicant" which reads in
5 part:

6 "Any false statement or omission of material information in connection with this application shall be
7 punished as provided by law and may subject the applicant to denial of a license or the revocation of
8 any license granted."

9 **E. Director's Responsibility for Licensing:** Pursuant to RCW 31.04.055, the Director is entrusted to measure and
10 determine that the "financial responsibility, experience, character, and general fitness of the applicant are such as to
11 command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly,
12 and efficiently within the purposes of this chapter."

13 North County's licensing and enforcement history, and its failure to provide full and honest answers to the
14 questions on the application, are material in determining North County's "financial responsibility, experience, character,
15 and general fitness" for the purposes of the Director forming a "belief that the business will be operated honestly, fairly,
16 and efficiently within the purposes of this chapter."

17 **F. Finding Regarding Respondents' Character:** Based on the false statements by Tierney and North County and the
18 license revocations in the states of Rhode Island and Georgia, North County does not exhibit the character and general fitness
19 such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly
20 and efficiently within the purposes of the Act.

21 **III. GROUNDS FOR ENTRY OF ORDER**

22 **A. Director's Authority:** Pursuant to RCW 31.04.165(1), the Director has the power, and broad administrative
23 discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by
24 loan companies subject to this chapter.

1 **B. Authority to Revoke License:** Pursuant to RCW 31.04.093(3)(c), the Director may suspend or revoke a license
2 issued under this chapter if the director finds that a fact or condition exists that, if it had existed at the time of the original
3 application for the license, clearly would have allowed the director to deny the application for the original license.

4 **C. Authority Not to Issue License:** Pursuant to RCW 31.04.055(1)(c) and RCW 31.04.055(2), the Director shall not
5 issue a license to an applicant if the Director finds that the applicant has held a license in another state that has been revoked or
6 suspended within the five years of the filing of the application.

7 **D. Authority Not to Issue License:** Pursuant to RCW 31.04.055(1)(e) and RCW 31.04.055(2), the Director shall not
8 issue a license to an applicant if the Director finds that the character and general fitness of the applicant do not command the
9 confidence of the community and/or warrant a belief that the business will be operated honestly and fairly.

10 **E. Authority to Impose Fine:** Pursuant to RCW 31.04.093(4)(a), the Director may impose a monetary penalty of up to
11 one hundred dollars per day for violations of the Act.

12 **F. Authority to Prohibit from the Industry:** Pursuant to RCW 31.04.093(6)(a), the Director may issue an order
13 removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee or
14 loan originator, or any person subject to this chapter for false statements or omission of material information from an
15 application for a license that, if known, would have allowed the Director to deny the original application for a license.

16 **G. Authority to Charge Investigative Costs:** Pursuant to RCW 31.04.145, every licensee examined or investigated by
17 the Director or the Director's designee shall pay to the Director the cost of the examination or investigation of each licensed
18 place of business as determined by rule by the Director.

19 **IV. NOTICE OF INTENTION TO ENTER AN ORDER**

20 Based on the foregoing Factual Allegations and Grounds for Entry of Order it is the Director's intention to ORDER:

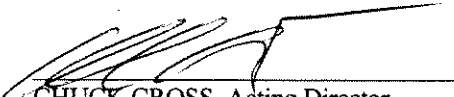
- 21 A. That North County's license to do business in the state of Washington as a consumer loan licensee be
22 revoked for a period of five (5) years; and
- 23 B. That North County and Tierney pay investigation fees in the amount of \$414.06, calculated at \$69.01 per
24 hour for six hours; and
- 25 C. That North County and Tierney pay a monetary penalty of \$3000.00, calculated at \$100.00 for 30 days;
- D. That Tierney be prohibited for a period of five (5) years from participation in the affairs of any licensee in
the consumer loan industry in Washington as an officer, principal, employee or loan originator.

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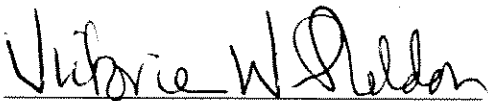
V. AUTHORITY AND PROCEDURE

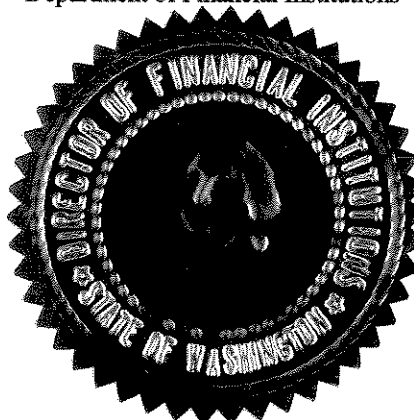
This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Fines, Collect Investigative Costs, and Prohibit from Participation in the Industry is entered pursuant to the provisions of RCW 31.04.055, RCW 31.04.165, RCW 31.04.202, RCW 31.04.205, and chapter 34.05 RCW. The Respondent may make a written request for a hearing as set forth in the Notice of Opportunity to Defend and Opportunity for Hearing accompanying the Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Fines, and Prohibit from Participation in the Industry.

DATED this 22nd day of JULY, 2003.


CHUCK CROSS, Acting Director
Division of Consumer Services
Department of Financial Institutions

Presented by:


Victoria W. Sheldon
Financial Legal Examiner



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DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
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1 **RCW 31.04.027 Violations of chapter.**

2 It is a violation of this chapter for a licensee, its officers, directors, employees, or independent contractors, or any other person
3 subject to this chapter to:

4
5 (8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any
6 reports filed with the department by a licensee or in connection with any investigation conducted by the department;

7 **RCW 31.04.055 License -- Director's duties.**

8 (1) The director shall issue and deliver a license to the applicant to make loans in accordance with this chapter at the location
9 specified in the application if, after investigation, the director finds that:

10 (a) The applicant has paid all required fees

11 (b) The applicant has submitted a complete application in compliance with RCW 31.04.045;

12 (c) Neither the applicant nor its officers or principals have had a license issued under this section or any other section, in
13 this state or another state, revoked or suspended within the last five years of the date of filing of the application;

14 (d) Neither the applicant nor any of its officers or principals have been convicted of a gross misdemeanor involving
15 dishonesty or financial misconduct or a felony or a violation of the banking laws of this state or of the United States
16 within seven years of the filing of an application; and

17 (e) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the
18 confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently
19 within the purposes of this chapter.

20 (2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the
21 license. The director shall notify the applicant of the denial and return to the applicant the bond posted and the sum paid by the
22 applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The director shall
23 approve or deny every application for license under this chapter within ninety days from the filing of a complete application with
24 the fees and the approved bond.

25 **RCW 31.04.093 Licensing -- Applications -- Regulation of licensees--Director's duties -- Fines -- Orders.**

(1) The director shall enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this
chapter.

(2) The director may deny applications for licenses for:

(a) Failure of the applicant to demonstrate within its application for a license that it meets the requirements for licensing
in RCW 31.04.045 and 31.04.055;

....
(c) Revocation or suspension of a license to conduct lending, or to provide settlement services associated with lending,
by this state, another state, or by the federal government within five years of the date of submittal of a complete
application for a license; or

....

(3) The director may suspend or revoke a license issued under this chapter if the director finds that:

....

(b) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any
rule adopted under this chapter; or

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would
have allowed the director to deny the application for the original license. The director may revoke or suspend only the
particular license with respect to which grounds for revocation or suspension may occur or exist unless the director

finds that the grounds for revocation or suspension are of general application to all offices or to more than one office operated by the licensee, in which case, the director may revoke or suspend all of the licenses issued to the licensee.

(4) The director may impose fines of up to one hundred dollars per day upon the licensee, its employee or loan originator, or other person subject to this chapter for:

(a) Any violation of this chapter;

(6) The director may issue an order removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee or loan originator, or any person subject to this chapter for:

(a) False statements or omission of material information from an application for a license that, if known, would have allowed the director to deny the original application for a license;

(b) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony;

(c) Suspension or revocation of a license to engage in lending, or perform a settlement service related to lending, in this state or another state;

(d) Failure to comply with any order or subpoena issued under this chapter; or

(e) A violation of RCW 31.04.027.

RCW 31.04.145 Investigations and examinations -- Director's duties -- Production of information -- Costs.

(1) For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the director may at any time, either personally or by designees, investigate or examine the loans and business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee and of every person who is engaged in the business making or assisting in the making of loans at interest rates authorized by this chapter, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For these purposes, the director or designated representatives shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director or persons designated by the director may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, records, files, and any other information the director or designated persons deem relevant to the inquiry. The director may require the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, records, files, or other information. If a licensee or person does not attend and testify, or does not produce the requested books, accounts, papers, records, files, or other information, then the director or designated persons may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, records, files, or other information.

(2) The director shall make such periodic examinations of the affairs, business, office, and records of each licensee as determined by rule.

(3) Every licensee examined or investigated by the director or the director's designee shall pay to the director the cost of the examination or investigation of each licensed place of business as determined by rule by the director.

1 **RCW 31.04.165 Director -- Broad administrative discretion -- Rule making--Actions in superior court.**

2 (1) The director has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the
3 delivery of financial services to the citizens of this state by loan companies subject to this chapter. The director shall adopt all
4 rules necessary to administer this chapter and to ensure complete and full disclosure by licensees of lending transactions
5 governed by this chapter.

6 (2) If it appears to the director that a licensee is conducting business in an injurious manner or is violating any provision of this
7 chapter, the director may order or direct the discontinuance of any such injurious or illegal practice.

8 (3) For purposes of this section, "conducting business in an injurious manner" means conducting business in a manner that
9 violates any provision of this chapter, or that creates the reasonable likelihood of a violation of any provision of this chapter.

10 (4) The director or designated persons, with or without prior administrative action, may bring an action in superior court to enjoin
11 the acts or practices that constitute violations of this chapter and to enforce compliance with this chapter or any rule or order
12 made under this chapter. Upon proper showing, injunctive relief or a temporary restraining order shall be granted. The director
13 shall not be required to post a bond in any court proceedings.

14 **RCW 31.04.202 Application of administrative procedure act.**

15 The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing
16 civil penalties or other remedies under this chapter, and any review or appeal of such action, shall be governed by the provisions
17 of the administrative procedure act, chapter 34.05 RCW.

18 **RCW 31.04.205 Enforcement of chapter -- Director's discretion -- Hearing -- Sanctions.**

19 The director or designated persons may, at his or her discretion, take such action as provided for in this chapter to enforce this
20 chapter. If the person subject to such action does not appear in person or by counsel at the time and place designated for any
21 administrative hearing that may be held on the action, then the person shall be deemed to consent to the action. If the person
22 subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for
23 sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.